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SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter, "Settlement Agreement" or "agreement") is entered into this 30th day of September, 2003 by and between the City of Santa Fe, a body politic and corporate under New Mexico law ("the City"), and Las Campanas Limited Partnership, a Delaware limited partnership authorized to do business in New Mexico ("Las Campanas").

WHEREAS, the City and Las Campanas are parties to that certain action pending in the State of New Mexico, First Judicial District, Case No. D-0101-CV-2002-01878 ("the Action"); and

WHEREAS, the City and Las Campanas desire to compromise and settle all claims, defenses and counterclaims asserted therein and dismiss the Action with prejudice as to the City and Las Campanas; and

WHEREAS, the City and Las Campanas desire to dismiss the Action without prejudice as to any claims, defenses and counterclaims asserted therein as to Las Campanas and the Board of County Commissioners of Santa Fe County ("the Board");

WHEREAS, the City and Las Campanas have agreed to compromise and settle the Action;

NOW THEREFORE the City and Las Campanas covenant and agree as follows:

I. BUCKMAN PERMIT GROUNDWATER

A. Golf Course Irrigation

1. **Quantity.** The City shall deliver to Las Campanas for golf course irrigation not more than 322 acre-feet per year ("AFY") of groundwater produced from the Buckman Wells ("Buckman Permit Groundwater").

2. **Delivery Schedule.** The City shall deliver the Quantity of Buckman Permit Groundwater set forth in §I(A)(1) above in accordance with the following delivery schedule ("the Monthly Delivery Schedule(s)") and average gallons per day ("GPD Quantity"):

	Monthly Delivery Schedule	GPD Quantity
JAN	14 AF	147,159 GPD
FEB	14 AF	162,925 GPD
MAR	18 AF	189,204 GPD
APR	24.8 AF	269,538 GPD
MAY	33.4 AF	350,884 GPD
JUN	40.1 AF	435,245 GPD
JUL	43.75 AF	459,902 GPD
AUG	38.20 AF	401,712 GPD
SEP	33.05 AF	359,287 GPD
OCT	27.7 AF	291,433 GPD
NOV	19 AF	206,372 GPD
DEC	16 AF	168,181 GPD

TOTAL 322 AFY

3. **Delivery Conditions.** The total quantity of Buckman Permit Groundwater delivered to Las Campanas for golf course irrigation on any one day ("Daily Maximum Quantity") shall not exceed 500,000 gallons. The total quantity of Buckman Permit Groundwater delivered to Las Campanas for golf course irrigation in any one month shall not exceed the quantity for such month shown in the Monthly

Delivery Schedule and related GPD Quantity. The total quantity of Buckman Permit Groundwater delivered to Las Campanas for golf course irrigation in any period from April 1 – October 31, and November 1 – March 31, shall not exceed 241 AF and 81 AF, respectively.

4. **Alternate Use of Quantity.** Las Campanas may, upon prior written notice to the City, elect to accept delivery in any month of less Buckman Permit Groundwater for golf course irrigation than the GPD Quantity shown in the foregoing Monthly Delivery Schedules, and instead accept delivery of the difference between the GPD Quantity and the reduced quantity it elects to accept for golf course irrigation (“the Alternate Use Quantity”), for domestic and commercial uses within the Project; provided, however, that Las Campanas shall pay for any such Alternate Use Quantity as provided in §I(A)(6) below.

5. **Substitution of Effluent.** Las Campanas may, upon prior written notice to the City, elect to accept delivery in the months of November through March of less Buckman Permit Groundwater for golf course irrigation than the GPD Quantity shown in the foregoing Monthly Delivery Schedules, and instead substitute, subject to the availability of supply, treated effluent purchased pursuant to §II, below, for the difference between the GPD Quantity and the reduced quantity it elects to accept for golf course irrigation; provided, however, that the total quantity of treated effluent deliverable by the City shall not exceed 450 AFY, and provided further that the Daily Maximum Quantity of treated effluent shall not exceed one million gallons, as set forth in §II, below.

6. **Price.** Las Campanas shall pay for all Buckman Permit Groundwater delivered under §I(A) the City's average commercial water rate per 1000 gallons (currently, \$4.09/1000 gallons), as such rate may be changed from time to time, plus New Mexico gross receipts taxes as required by New Mexico law.

7. **Suspension of Lease Payments.** Except as provided in §I(B) below, respecting delivery by the City of Buckman Permit Groundwater for domestic and commercial uses within the Project, Las Campanas' payments under the Lease and the Management Agreement, shall be suspended beginning April 1, 2004.

8. **Compliance with Judgment.** The parties agree that the quantity of Buckman Permit Groundwater set forth in §I(A)(1), above, shall be deliverable by the City to Las Campanas as provided in this §I(A), except and unless the City shall declare a Stage 4 Water Emergency Management Stage under the Emergency Water Regulations Ordinance ("the Ordinance"). In the event that the City declares a Stage 4 Water Emergency under the Ordinance, the parties hereby reserve all rights and remedies that each may have, at law or in equity, one against the other; provided, however, that the parties agree to be bound by the Order and Partial Judgment entered September 19, 2003 ("the Judgment") in the Action. Nothing in this provision shall prevent either party in any subsequent litigation that may arise out of the City's declaration of a Stage 4 Water Emergency, from raising any issue not actually litigated or decided by the Court in entering the Judgment.

9. **Term.** Section I(A) of this agreement shall commence April 1, 2004 and shall terminate on the date of operation of the Buckman Surface Diversion Project or December 31, 2012, whichever occurs first.

10. Lease Termination. The Lease and the Management Agreement shall terminate and be of no further force or effect, except with respect to Las Campanas Domestic Water Needs, as such term is defined in the Lease, on the date of operation of the Buckman Surface Diversion Project or December 31, 2012, whichever occurs first.

B. Domestic and Commercial Uses

1. Quantity. The City shall deliver to Las Campanas for domestic and commercial uses within the Project Buckman Permit Groundwater in a total annual amount that shall be the lesser of (a) 650 AFY or (b) the sum of the maximum annual water use authorized by the restrictive water use covenant applicable to each lot in Las Campanas with respect to which an active water meter has been authorized and installed as of the end of each calendar year, plus 75 AFY, which amount represents Las Campanas' commercial water use within the Project not subject to any restrictive covenant. Subject to the limit of 650 AFY, the parties further agree (i) that upon final approval and actual operation of the planned equestrian center within the Project, the quantity deliverable hereunder shall be increased 9 AFY, and (ii) that the quantity deliverable hereunder may be further increased by an amount not to exceed 3 AFY which shall be used by Las Campanas solely for the construction of infrastructure, roads and common facilities within the Project. Any Alternate Use Quantity under §I(A)(4) above, shall not be included as part of the quantity deliverable for domestic and commercial use under this §I(B)(1). Las Campanas agrees that the total quantity of Buckman Permit Groundwater determined in accordance with §I(B)(1) constitutes the

annual demand for water for all domestic and commercial uses within the Project (“the Annual Demand”).

2. Payment for Domestic and Commercial Water Use. Las

Campanas shall pay for all Buckman Permit Groundwater delivered by the City for domestic and commercial uses within the Project pursuant to §I(B), the same amounts at the same rates currently being charged under the Lease and the Management Agreement; provided, however, that the fixed annual rent (“the Rent”) under the Lease and any amounts payable for repair and replacement costs (“Repair and Replacement Costs”) under the Lease shall abate in part during the term of this §I(B) as follows:

Las Campanas shall pay that percentage of the Rent and that percentage of Repair and Replacement Costs payable under the Lease, equal to the proportion that the total quantity of water delivered to Las Campanas in each year for domestic and commercial uses bears to 1600 AFY.

3. Compliance with Judgment and Lease ¶12(b). Las Campanas

agrees that pursuant to the Judgment, Las Campanas shall restrict the total water delivered from the Buckman Wells and the Buckman Transmission Line to the Project for domestic and commercial uses to an amount calculated by assuming that the Project is subject to the Ordinance. Las Campanas further agrees that pursuant to Paragraph 12(b) of the Lease, Las Campanas shall share *pro rata* in water shortages of the City water utility and shall reduce its demand for water from the Leased Buckman Facilities by the same percentage that the City water utility’s delivery of water to other similar customers is reduced during such periods. Therefore, in the event that the City shall declare a Water Emergency Management Stage under the Ordinance, Stage 1 – Stage 4

inclusive, Las Campanas shall reduce the Annual Demand under §I(B)1, above, by the same percentage that the City water utility's delivery of water to its domestic and commercial customers is reduced during such Water Emergency Management Stage. The parties agree to act reasonably and in good faith in any Water Emergency Management Stage to establish the percentage by which the delivery of water to domestic and commercial customers of the City water utility is reduced, and by which Las Campanas shall reduce its Annual Demand. When the City declares a Water Emergency, the City shall have a continuing obligation to monitor the average percentage by which its delivery of water to domestic and commercial, excluding municipal, users, is reduced on a per meter connection basis during such Water Emergency Management Stage as compared to the most recent non-Emergency year and to report such information to Las Campanas monthly in order to facilitate continuing compliance by Las Campanas with its obligation to reduce its Annual Demand. For the purposes of implementing this provision, the parties agree that (1) when the City declares a Water Emergency, Las Campanas shall initially reduce its rate of Annual Demand by 12% in a Stage 2 Water Emergency or 25% in a Stage 3 Water Emergency subject to modification up or down as provided above; and (2) the average percentage by which the City's deliveries of water to domestic and commercial, excluding municipal, users is reduced in a declared Emergency shall be measured against an assumed rate of use computed by dividing the City's water total water production from all sources during 2001, currently the most recent non-Emergency year, by the number of City meter connections in 2001. The parties agree that Las Campanas shall be in substantial compliance with this provision provided that the total quantity of water

delivered to Las Campanas for domestic and commercial uses in any year in which a Water Emergency Management Stage has been declared shall be within 3% of Las Campanas' reduced Annual Demand determined in accordance with this provision.

4. **Term.** Section I(B) of this agreement shall commence January 1, 2004 and shall terminate on the date of operation of the Buckman Surface Diversion Project or December 31, 2027, whichever occurs first.

5. **Change in Payment Provisions.** In the event that the Buckman Surface Diversion Project has not commenced operation by December 31, 2012, then beginning on January 1, 2013, the terms of payment under §I(B)(2) shall be of no further force or effect. In such event the parties shall immediately engage in good faith price renegotiations; provided, however, that in the event the parties are unable to reach agreement on price, the amount payable by Las Campanas to the City from and after January 1, 2013 for all domestic and commercial water use within the Project shall be an amount equal to the amount that each domestic and commercial water user within the Project would pay for water service if such water user were then a customer of the City water utility based upon all then applicable rates and charges, of whatever kind, plus New Mexico gross receipts taxes as required by New Mexico law; and provided further that upon the imposition of such charges, all further payments by Las Campanas of the Rent and Repair and Replacement Costs under the Lease, and O&M charges under the Management Agreement shall cease.

6. **Lease Termination.** The Lease and the Management Agreement shall terminate and be of no further force or effect with respect to Las Campanas'

Domestic Water Needs, as such term is defined in the Lease, on the date of operation of the Buckman Surface Diversion Project or December 31, 2027, whichever occurs first.

C. Terms Applicable to Delivery of Buckman Permit Groundwater for Both Golf Course Irrigation and Domestic and Commercial Use

1. **Offset Rights.** Las Campanas shall own or control surface water rights or contract rights to surface water, in a form acceptable to the City and as determined by applicable State Engineer jurisdiction, in an amount sufficient to offset all stream depletion effects on the Rio Grande and any affected tributaries, including all future effects attributable to the diversion of any water from the Buckman Wells delivered to Las Campanas since 1991, for so long as any such stream depletion effects shall continue. Throughout the terms of this agreement, set forth in §I(A)(9) and §I(B)(4), respectively, the City shall have the right to use all offsetting water rights owned or controlled by Las Campanas on the Rio Tesuque, Rio Nambe and the Rio Pojoaque, not required to offset the effects of groundwater pumping for Las Campanas, to support the diversion of groundwater from the Buckman Wells under the Buckman Permit.

2. **Water Quality.** It is understood and agreed that the City shall deliver untreated, raw water to Las Campanas and the City has no obligation, and makes no warranties or representations, as to the quality, condition or potability of the water or its suitability or fitness for any particular use or purpose.

3. **Cooperation on Buckman Surface Diversion Project.** The parties agree to act reasonably and in good faith to cooperate on the Buckman Surface Diversion Project. Nothing in this agreement shall affect any rights or obligations of either party under any other agreement, nor shall this agreement prohibit either party

from going forward with the Buckman Surface Diversion Project in the event the other party is unable or unwilling at any time to proceed with such project.

4. **Lease Suspension.** Except as otherwise provided herein, the obligations of the City and Las Campanas under the Lease and the Management Agreement shall be suspended throughout the terms of this agreement set forth in §I(A)(9) and §I(B)(4), respectively, it being expressly understood and agreed that the City's obligations respecting any and all well pumping, pipeline transportation and delivery of any Buckman Permit Groundwater to Las Campanas shall be governed solely by the terms, provisions and conditions set forth herein.

5. **Total Quantity of Buckman Permit Groundwater.** The total quantity of Buckman Permit Groundwater deliverable by the City to Las Campanas in any year shall not in any event exceed the sum of the quantities as provided in §I(A) and §I(B) above.

II. TREATED EFFLUENT

1. **Quantity.** The City shall sell and deliver to Las Campanas for golf course irrigation only up to 450 AFY of treated effluent for each year of the Initial Term of Section II of this agreement in accordance with the terms hereof.

2. **Delivery Schedule.** The City shall sell and deliver 428 AFY of treated effluent to Las Campanas in accordance with the following Monthly Delivery Schedules and related average GPD Quantity:

	Monthly Delivery Schedule	GPD Quantity
APR	44.2 AF	479,179 GPD
MAY	59.6 AF	623,793 GPD

JUN	70.9 AF	773,769 GPD
JUL	77.25 AF	817,604 GPD
AUG	67.8 AF	714,155 GPD
SEP	58.95 AF	638,732 GPD
OCT	49.3 AF	518,103 GPD

428 AFY

During the months of January, February, March, November and December of each year Las Campanas shall have the right, subject to prior written notice to the City and availability of supply, to purchase an additional 22 AF of treated effluent, such that the total quantity of effluent purchased from the City in any one year may be up to 450 AFY. The total quantity of treated effluent delivered to Las Campanas for golf course irrigation on any one day ("Daily Maximum Quantity") shall not exceed 1,000,000 gallons.

3. **Price.** The price for all treated effluent sold to Las Campanas during the Initial Term shall be the City's average commercial water rate per 1,000 gallons of water less 50% (currently, \$2.05/1000 gallons), as such rate may be changed from time to time, plus New Mexico gross receipts taxes as required by New Mexico law.

4. **Initial Term.** This agreement shall commence on April 1, 2004, and the Initial Term hereof shall terminate on December 31, 2008.

5. **Delay in Start Date.** In the event that Las Campanas shall be unable as of April 1, 2004, to accept delivery from the City of treated effluent as

provided in §II(10) below, as a result of delays not unreasonably caused by Las Campanas, through no fault of its own, then the Initial Term hereof shall not commence until the date that Las Campanas is first able to accept such deliveries. If, through no fault of its own, Las Campanas shall be unable to accept deliveries of treated effluent beginning on April 1, 2004, the City shall deliver Buckman Permit Groundwater to Las Campanas, instead of treated effluent, in accordance with the Delivery Schedule for effluent in set forth §II(2) above and at the Price for effluent set forth in §II(3) above; provided, however, that the obligations of Las Campanas set forth in §II(10) below shall be material to §II of this agreement and time shall be of the essence of Las Campanas' performance of all such obligations.

6. **Renewal Terms.** Las Campanas shall have the right in its sole discretion and at its election to extend §II of this agreement for five successive periods as provided below ("Renewal Terms"). Las Campanas shall exercise its right to extend this agreement for each Renewal Term by giving the City written notice thereof no later than the 1st day of July of the year prior to the start of such Renewal Term:

First Renewal Term:	January 1, 2009 to December 31, 2012
Second Renewal Term:	January 1, 2013 to December 31, 2016
Third Renewal Term:	January 1, 2017 to December 31, 2020
Fourth Renewal Term:	January 1, 2021 to December 31, 2024
Fifth Renewal Term:	January 1, 2025 to December 31, 2027

7. **Annual Renewal Term Quantity.** No later than the 1st day of November prior to the start of each calendar year in each Renewal Term, the parties shall agree upon the quantity of treated effluent which shall be subject to purchase and

sale during the forthcoming calendar year ("the Annual Renewal Term Quantity"); provided, however, that in the event the parties are unable to agree on the quantity of treated effluent, the Annual Renewal Term Quantity shall be 450 AFY, or such lesser quantity as Las Campanas shall designate in writing to the City on or before November 1st.

8. **Renewal Term Price.** The price for all treated effluent sold and delivered to Las Campanas in each Renewal Term shall be the City's average commercial water rate per 1000 gallons of water less 50%, as such rate may be changed from time to time, plus New Mexico gross receipts taxes as required by New Mexico law. In each year of any Renewal Term, Las Campanas shall take and pay for, or failing to take, nevertheless pay for, the Annual Renewal Term Quantity.

9. **Point of Delivery.** The point of delivery shall be at the outlet of the Storage Tank to be installed at the City's WWTP.

10. **Conditions.** On or before April 1, 2004, Las Campanas, at its sole cost and expense, shall install all facilities and equipment necessary for the City to store, and for Las Campanas to accept delivery of and transport to the Project all treated effluent subject to purchase and sale under §II of this agreement, and shall obtain all necessary governmental permits and approvals, including any rights-of-way for the performance of §II of this agreement. Such facilities shall include a two million gallon storage tank, including all related equipment and instrumentation necessary to fill, store, monitor, measure and deliver effluent to Las Campanas at the tank outlet ("the Storage Tank"), the specifications of which facilities shall be subject to review and approval by the City, and which shall be installed on the City's WWTP property at a 599- State Road start w/ temp.

location acceptable to the City. Las Campanas, at its sole cost and in its sole discretion, shall install all other pumping, pipeline and any other related or necessary equipment and facilities to accept delivery of, transport, disinfect and deliver such effluent to the Project. Upon written request from Las Campanas, the City and the County shall act reasonably and in good faith to cooperate with Las Campanas in any governmental permitting process necessary for performance of §II of this agreement. Upon fully depreciating the Storage Tank or termination of the effluent agreement, whichever occurs first, Las Campanas shall sell and the City shall purchase the Storage Tank for \$1.00. Throughout the term of §II of this agreement, the City shall, at its sole cost and expense, operate, maintain and repair the Storage Tank for which services the purchase price paid by Las Campanas hereunder shall constitute good and sufficient consideration. The Storage Tank shall be operated consistently with the City's obligations to deliver treated effluent to others and to meet the City's delivery obligations to Las Campanas hereunder; provided, however, that Las Campanas shall have priority for effluent delivered from the Storage Tank. Throughout the term of the effluent agreement, Las Campanas, at its sole cost and expense, shall own, operate, maintain and repair all facilities, including any pumping and pipeline equipment, necessary to accept delivery from the City of all treated effluent subject to purchase at the outlet of the Storage Tank, disinfect such effluent, and transport and use the same for golf course irrigation at the Project.

11. **Interruption in Effluent Delivery.** In the event that the City shall, during the Initial Term or any Renewal Term, be unable to deliver treated effluent to Las Campanas and such inability shall continue for more than 48 consecutive hours,

then the City shall use its best efforts to provide Las Campanas an alternate source of water for golf course irrigation and shall act reasonably and in good faith to cooperate with Las Campanas until the City shall be able to resume the delivery of treated effluent, so as to avoid any unreasonable harm or damage to Las Campanas' golf courses. The City shall provide Las Campanas seven (7) days prior written notice of any planned interruptions in operations.

III. CONTRIBUTION BY LAS CAMPANAS FOR WATER PURPOSES

Las Campanas shall make a contribution to the City in the amount of \$750,000 to be used for water utility supply and infrastructure and related or comparable purposes. Las Campanas shall make such contribution to the City in five equal annual installments of \$150,000 each, with the first installment being due and payable January 1, 2004, and each succeeding installment becoming due and payable on the first day of January 2005, 2006, 2007 and 2008, respectively.

IV. RELEASES

1. **Release of Las Campanas.** The City of Santa Fe, a body politic and corporate under New Mexico law, on behalf of itself, its agents, attorneys, successors and assigns hereby releases, acquits and forever discharges Las Campanas Limited Partnership, its attorneys, employees, directors, officers, shareholders, partners, trustees, representatives, predecessors, successors, heirs and assigns, and each and all of them, of and from any and all claims, counterclaims, demands, liabilities, debts, damages, costs, expenses, losses, and causes of action of every kind, nature and description whatsoever, whether at this time known or unknown, anticipated or unanticipated, direct or indirect, fixed or contingent, which may presently exist or which may hereafter arise or become known, for or by reason of any event, transaction,

matter or cause alleged in the Action or which could or might be based upon any fact, matter or issue in the Action, including any claim for compensatory, punitive or exemplary damages, restitution, costs and attorneys' fees; provided, however, that this release shall not apply to any covenant or obligation of Las Campanas under this Settlement Agreement.

2. **Release of the City.** Las Campanas Limited Partnership, a Delaware limited partnership, authorized to do business in News Mexico, on behalf of itself, its agents, attorneys, employees, directors, officers, shareholders, partners, trustees, representatives, predecessors, successors, heirs and assigns, hereby releases, acquits and forever discharges the City of Santa Fe, a body politic and corporate under New Mexico law, its agents, attorneys, successors and assigns, and each and all of them, of and from any and all claims, counterclaims, demands, liabilities, debts, damages, costs, expenses, losses, and causes of action of every kind, nature and description whatsoever, whether at this time known or unknown, anticipated or unanticipated, direct or indirect, fixed or contingent, which may presently exist or which may hereafter arise or become known, for or by reason of any event, transaction, matter or cause alleged in the Action or which could or might be based upon any fact, matter or issue in the Action, including any claim for compensatory, punitive or exemplary damages, restitution, costs and attorneys' fees; provided, however, that this release shall not apply to any covenant or obligation of the City under this Settlement Agreement.

3. **Notice of Dismissal.** Upon the execution of this Settlement Agreement, the City and Las Campanas shall promptly file a Notice of Dismissal of the Action. The parties understand and agree that the Board of County Commissioners of Santa Fe

County ("the Board"), is not a party to this Settlement Agreement and that as to the Board the Notice of Dismissal shall be without prejudice. Consistent with the terms of this agreement, the parties further agree that as to the City and Las Campanas the Notice of Dismissal shall be with prejudice.

4. **Compromise.** The parties understand and agree that this Settlement Agreement and the releases contained herein are intended as a compromise of disputed claims, defenses and counterclaims alleged in the Action and that the consideration therefor shall not be construed as an admission of liability on the part of either party, both of whom expressly deny any liability to the other and agree to settle the Action as provided in this Settlement Agreement.

V. MISCELLANEOUS

1. **Assignment.** Las Campanas shall not voluntarily, or by operation of law, assign, transfer or otherwise encumber all or any part of Las Campanas' right, title or interest in this Settlement Agreement, except to a related, successor, club entity or utility association responsible for service on Las Campanas property; ~~provided no such~~ ^{H&T} ~~assignment shall be made~~ ^{H&T} without the City's prior written consent, which consent shall not be unreasonably withheld.

2. **Successors and Assigns.** Each and all of the agreement, covenants and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties, their respective representatives, successors, transferees and assigns.

3. **Full Agreement.** This Settlement Agreement constitutes the full and complete agreement between the parties, and there are no representations, promises, terms, conditions, covenants or agreements other than as set forth herein.

4. **Modification.** This Settlement Agreement shall not be modified except as approved in writing by both parties.

WHEREFORE, the parties have executed this agreement this 30th day of September, 2003.

The City of Santa Fe

By Larry A. Delgado
Larry A. Delgado, Mayor
Attest:

By Yolanda Y. Vigil
Yolanda Y. Vigil, City Clerk
Approved As To Form

By Bruce Thompson
Bruce Thompson, City Attorney

Las Campanas Limited Partnership
a Delaware limited partnership

By Las Campanas Corporation
its sole general partner

By Harry Turner
Harry Turner
Vice President and General Manager